

**BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for the  
Termination of Probation of:**

**BLAISE PHILIP VINCENT DeSOUZA, M.D.**

**File No. 02-1998-92430**

**Physician's and Surgeon's  
Certificate No. A 37917**

**Respondent.**

**DECISION**

**The attached Proposed Decision is hereby adopted as the Decision and Order of the  
Division of Medical Quality of the Medical Board of California, Department of Consumer  
Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on December 27, 2002.**

**IT IS SO ORDERED November 27, 2002.**

**MEDICAL BOARD OF CALIFORNIA**

**By:**

  
**Lorie G. Rice, Chair**

**Panel A**

**Division of Medical Quality**

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DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for the  
Termination of Probation of:

**BLAISE PHILIP VINCENT DeSOUZA**

Physician's and Surgeon's Certificate No. A 37917

Petitioner.

Agency Case No. 02-98-92430

OAH Case No. L2002080479

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 22, 2002, in San Diego, California.

Steven H. Zeigen, Deputy Attorney General, represented the Office of the Attorney General, State of California.

Blaise Philip Vincent DeSouza, M.D. represented himself and was present throughout the administrative hearing.

The matter was submitted on October 22, 2002, after taking oral and documentary evidence.

**FACTUAL FINDINGS**

1. Blaise Philip Vincent DeSouza (Petitioner) was born in India on October 15, 1953. He obtained his medical degree from Punjab University, Christian Medical College in Vellore, India in December 1976.

Petitioner completed a straight internship at Hospital of St. Raphael, New Haven, Connecticut, in June 1979. He completed a surgical residency at Hospital of St. Raphael in June 1980.

2. On January 11, 1982, the Medical Board of California issued Physician's and Surgeon's Certificate No. A 37917 to Petitioner.

3. Petitioner engaged in a general medical practice as a solo practitioner in Foresthill, California, under the name Foresthill Medical Center. Petitioner held staff privileges at Sutter Auburn Faith Hospital in Auburn, California.

4. Foresthill is a small community of not more than 5,000 persons located in the Sierra Nevada Mountains west of Lake Tahoe. Foresthill is 17 miles northeast of Auburn, which has the nearest hospital.

5. On November 30, 1998, Petitioner was arrested by the Placer County Sheriff's Department for violating a temporary restraining order, for stalking a former girlfriend and for public intoxication. Petitioner was released on bail the following day and was ordered not to have further contact with the ex-girlfriend pursuant to an emergency protective order.

On January 24, 1999, Petitioner was arrested again and charged with stalking, violating the emergency protective order and a no-contact order when he attempted to contact his former girlfriend at her place of employment.

At the time of his arrests, Petitioner was abusing alcohol and was self-administering Xanax and Prozac. For this reason, there was ample and reasonable concern for the quality of care provided by Petitioner to his patients.

6. On March 1, 1999, an Interim Suspension Order became effective, suspending Petitioner's certificate, on the basis of unprofessional conduct.

7. On March 31, 1999, Petitioner pled nolo contendere to felony stalking, in violation of Penal Code section 646.9, in the Superior Court of California, County of Placer, in Case No. 62-06119 entitled *People of the State of California v. Blaise Philip Vincent DeSouza*. Petitioner was sentenced to serve five years in the state prison, but that order was stayed. Petitioner was placed on five years formal probation requiring him to complete a batterer's treatment program, complete a 60-day residential drug/alcohol treatment program and pay various fines, penalty assessments and restitution.

8. Petitioner resided at "Duffy's" from April 27 through June 26, 1999. Duffy's was and is a residential drug/alcohol treatment facility. Petitioner actively participated in the recovery program for alcoholism and substance addiction. The program incorporated a 12-step program philosophy, rational emotive therapy and cognitive behavioral modification techniques. It included daily private professional counseling and group therapy.

According to Gene Duffy, the President of Duffy's, "Mr. DeSouza's attitude of acceptance and cooperation was outstanding."

9. On May 11, 1999, while Petitioner was residing at Duffy's, he signed a Stipulated Settlement and Disciplinary Order that became effective on July 5, 1999.

Petitioner stipulated that he abused alcohol and self-administered Prozac and Xanax without a bona fide prescription, that he entered into a patient-physician relationship with a person with whom he previously had an intimate relationship, and that grounds existed to discipline his physician's and surgeon's certificate.

10. On July 5, 1999, the Board's disciplinary order became effective. Petitioner's certificate was revoked; however, the order of revocation was stayed and Petitioner was placed on five years probation on various terms and conditions which included:

- Petitioner was ordered to abstain completely from the personal use or possession of controlled substances, dangerous drugs and any drugs requiring a prescription other than those prescribed by another practitioner in the treatment of a bona fide illness or condition.
- Petitioner was ordered to abstain completely from the use of alcohol if he was diagnosed with alcohol dependence; otherwise, he was to not consume alcoholic beverages to the point of intoxication or dangerous impairment.
- Petitioner was ordered to immediately submit to biological fluid testing, at his expense, at the Board's request.
- Petitioner was ordered to maintain a record of all controlled substances he dispensed or administered while he was on probation.
- Petitioner was ordered to enroll in a diversion program if he was diagnosed with alcohol or other substance abuse.
- Petitioner was ordered to undergo a psychiatric examination within 60 days and thereafter as might be required.
- Petitioner was ordered to be evaluated by an addiction medication specialist within 30 days of the effective date of the order.
- Petitioner was ordered to engage in ongoing psychiatric counseling or psychotherapy until it was no longer deemed appropriate.
- Petitioner was ordered to file quarterly reports attesting to his compliance with the terms and conditions of probation and to comply with the probation surveillance program.
- Petitioner was directed to pay \$2,500 in cost recovery.

11. Reports from the probation surveillance program confirmed Petitioner's testimony that he complied with all terms and conditions of probation. In September 1999, Petitioner enrolled in the diversion program. He continuously tested negative during

probation for alcohol and drug use. He attended three diversion meetings per week and daily AA meetings outside diversion. Petitioner completed the PACE prescribing practices course on June 22, 1999. He was determined to be mentally and emotionally competent to practice following a psychiatric examination on June 22, 1999. Petitioner completed a one-year batterer's course known as ManAlive on September 26, 2000. Petitioner remained current with regard to his continuing professional education. On April 30, 2001, Petitioner filed a Petition for Termination of Probation.

12. Petitioner submitted glowing letters from a diversion program manager and a diversion program specialist.

13. Petitioner submitted considerable documentary evidence to corroborate his testimony that he remains current in his continuing professional education.

14. On March 13, 2002, Petitioner's felony conviction was reduced to a misdemeanor under Penal Code section 1203.4.

15. Petitioner submitted a letter signed by Eugene P. Roeder, Ph.D. (Dr. Roeder), a licensed clinical psychologist. Dr. Roeder, who is Petitioner's therapist, recommended that Petitioner's probation be terminated, stating that "his intimate personal relationships and his sobriety are all positive and healthy" and "Dr. DeSouza continues to be emotionally fit to practice medicine safely, and his prognosis for continuing in this capacity is quite positive."

16. On December 21, 2000, the American Board of Emergency Medicine recertified Petitioner as a Diplomate of the American Board of Emergency Medicine. The recertification is valid through December 31, 2010.

17. Petitioner remains an active staff member at the Sutter Auburn Faith Hospital.

18. Petitioner submitted letters of recommendation from Dan Thomas Merck, M.D. (Dr Merck), Michael W. Leathers, M.D (Dr. Leathers) and James T. Hansen, M.D. (Dr. Hansen).

Dr. Merck, who did not know Petitioner before discipline was imposed, believed Petitioner was a peaceful, cautious and contentious person who takes good care of himself and is "making good progress in his recovery."

Dr. Leathers has seen positive changes in Petitioner and has not observed any evidence of continued alcohol or substance abuse.

Dr. Hansen's relationship with Petitioner is "recovery related." Dr. Hansen observed a "fantastic change" in Petitioner since discipline was imposed.

19. Petitioner testified on his own behalf. Petitioner is challenged by a major stutter, which he believes might have caused him to abuse alcohol and drugs since those

substances helped him to relax, made his speech more calm and decreased his anxiety concerning his condition.

Petitioner claimed a sobriety date of January 25, 1999, the day after his second arrest. Since then Petitioner has engaged in substantial 12-step work. He attends diversion program meetings and an additional three AA meetings per week. Petitioner testified that he is "in the process of learning how to live healthy."

Petitioner is a devoted father to his two daughters, ages five and seven, whom he has custody of 50% of the time. Petitioner enjoys a meaningful relationship with his fiancée, who attended the hearing in his support.

Petitioner provides medical services to the elderly and poor in his community at a reduced rate and sometimes for free. He makes house calls. Petitioner is a good citizen in his community.

Petitioner expressed himself well despite his impediment. He has a good sense of humor, a realistic perspective about his past and reasonable optimism for the future.

Petitioner has done everything that was required of him on probation. He has exceeded those minimum requirements in connection with his recovery outside of probation.

20. Petitioner currently pays \$13,500 per year in malpractice premiums. If his probation were terminated, he would pay around \$4,000 a year, which would represent a substantial savings. This savings would, according to Petitioner, permit him to increase the medical services he provides to the elderly and poor in his community.

21. The Attorney General's Office opposed the petition, arguing that recovery is a process, that Petitioner originally agreed to five years of probation to avoid the risk of losing his license and there was no compelling reason to permit Petitioner to avoid that agreement, there was insufficient evidence produced to conclude that Petitioner can safely practice without probation and, finally, that Petitioner's financial concerns do not outweigh the need protect the public.

## LEGAL CONCLUSIONS

### *Statutory Basis for Reinstatement*

1. Business and Professions Code section 2307 provides in pertinent part:

"A person . . . who has been placed on probation may petition the Division of Medical Quality for . . . termination of probation, after a period of not less than the following minimum periods have elapsed from the effective date of the decision ordering that disciplinary action:

. . .

(b) At least two years for early termination of probation of three years or more.

The petition shall state any facts as may be required by the division. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

... The division may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the division ... which shall be acted upon in accordance with Section 2335.

The ... administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . ."

2. Cause was not established under Business and Professions Code section 2307 to grant the petition to terminate probation even though Petitioner satisfactorily established that he has diligently and successfully complied with all terms and conditions of probation, that he acquired remedial education and training, and that he is in the process of recovery.

Recovery from substance abuse or chemical dependency is an ongoing process. Success is not guaranteed. Prolonged recovery is the best evidence of a successful recovery program.

While no evidence suggests that Petitioner has suffered a slip or a relapse in his recovery, he remains in the first four years of his recovery. He is in the first three and one-half years of his probation. It was not established that the diversion program in which Petitioner participates is as closely monitored as his probation. The community in which Petitioner practices is extremely small and there is not the kind of oversight that would exist if Petitioner were practicing in a more populated area. If the presence of a high level of oversight is established in the future, very serious consideration should be given to granting Petitioner's request to terminate probation because Petitioner is making wonderful progress in his recovery.

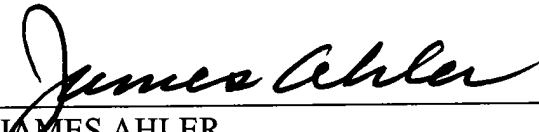
This decision is reached without prejudice to the granting of a similar petition in the future. At that time, Petitioner will probably have a longer period of recovery and he will be in a better position to establish that the diversion program in which he participates is the near equivalent of the monitoring that is currently being provided through probation and that a high level of oversight exists in his community.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

The petition of Blaise Philip Vincent DeSouza for the termination of probation and the full reinstatement of his physician's and surgeon's certificate is denied.

DATED: November 5, 2002.

  
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JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearing